IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT:

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE Mr. JUSTICE RAMESH RANGANATHAN

–

WRIT PETITION No.4466 of 2005

Between:

Devarasetty Venkata Ramaiah, S/o. Rama Murthy,

Beside Leela Mahal, Kothapet, Guntur, Guntur District.

..... PETITIONER

AND

1. The Deputy Commercial Tax Officer,

Arundalpet Unit, Arundalpet Circle, Guntur.

2. The Commercial Tax Officer, Kothapet Circle, Guntur.

3. M/s. Srinivasa Cotton Syndicate, Leela Mahal Road, Guntur.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be

pleased to Issue an appropriate Writ or Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing the impugned notice in Form-5 under the A.P. Revenue Recovery Act, dated 04.11.2004 published in the Guntur District Gazette on 06.01.2005 as illegal, arbitrary and without authority of law and set aside the same by declaring that the Respondents cannot proceed against the petitioner's property for recovery of the arrears of tax basing on the surety bond.

Counsel for the Petitioner: Mr. M.V. PAVAN KUMAR

Counsel for the Respondents 1 & 2: Spl. S.C. for Commercial Tax
G.P. for Commercial Tax

Counsel for Respondent No.3 :

The Court at the admission stage made the following :

ORDER:

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to declare the proceedings, dated 04-11-2004, initiated under the provisions of the Andhra Pradesh Revenue Recovery Act, as illegal and void.

In order to consider the question as to whether the impugned proceedings issued by the 1st respondent-Deputy Commercial Tax Officer, Arundalpet Unit, suffers from any infirmities requiring interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, a few relevant facts leading to filing of this writ petition may have to be noticed.

The 3rd respondent-M/s. Srinivasa Cotton Syndicate is a partnership firm with partners *viz*., Kota Vijaya Kumar and Devarasetty Kiran Kumar, and the same is registered as a dealer under the provisions of the Central Sales Tax Act, 1956 (for short 'the CST Act'). The 3rd respondent dealt in the business of cotton lint. There is no dispute whatsoever that at the time of issuing Registration Certificate to the 3rd respondent-dealer under the provisions of the CST Act in the year 1997, the writ petitioner executed a surety/security letter offering his immovable property bearing Door No.417, Plot No.43, Gorantla village, admeasuring 308 square yards (for short 'the said property') as security for proper realization of the tax payable under the provisions of the

CST Act from the 3rd respondent. It is also an undisputed fact that one of the partners of the 3rd respondent firm is the son of the writ petitioner.

Be that as it may, the assessments of the third respondent firm for the years 1999-2000, 2000-2001, 2001-2002 were completed by the 2nd respondent in his capacity as assessing authority under the provisions of the CST Act. It was however revised by the Deputy Commissioner (CT) Narasaraopet, Guntur, on the ground that certain interstate sales of cotton lint had escaped to tax. It was ultimately found that the 3rd respondent has to pay the tax under the provisions of the CST Act amounting to Rs.15,09,246/-.

It appears that the 3rd respondent stopped its business. On an enquiry, it was realized that the partners of the firm could not be traceable. It was also found that the managing partner of the firm filed insolvency petition before the learned Additional Senior Civil Judge, Guntur. Respondents 1 and 2, in order to realize the revenue due to the State have decided to proceed against the petitioner, who stood as security for proper realization of the tax payable under the CST Act, since the liability of the petitioner is
co-extensive to that of the main defaulting party. Pursuant to the said decision, notice in Form – 4, dated 04-10-2004, was issued prior to the attachment of the immovable property in question, followed by Form - 5 notice, dated 04-11-2004, attaching the said property. Form - 5 notice was published in the Guntur District Gazettee on 06-01-2005 as is required in law.

Sub-section (2A) of Section 7 of the CST Act 1956, which is relevant for the present purpose, reads as under;

> "**(2A)** Where it appears necessary to the authority to whom an application is made under sub-section (1) or sub-section (2) so to do for the proper realization of the tax payable under this Act or for the proper custody and use of the forms referred to in clause (a) of the first proviso to sub-section (2) of Section 6 or sub-section (1) of Section 6A or clause (a) of sub-section (4) of Section 8, he may, by an order in writing and for reasons to be

> recorded therein, impose as a condition for the issue of a certificate of registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes".

That a plain reading of the provision makes it abundantly clear that the authority to whom an application is made by a dealer for registration under the provisions of the CST Act is entitled to impose as a condition for issue of certificate of registration a requirement that the dealer shall furnish in the prescribed manner, such surety as may be so specified for proper realization of the tax payable under the provisions of the CST Act. Of course, the authority to whom an application is made is required to pass an order in writing and for the reasons to be recorded therein for imposing such a condition requiring the dealer to furnish, in the prescribed manner, such security as may be so specified in the order.

There is no dispute in the instant case that such an order has been made by the authority at the time of registration of the
3rd respondent as a dealer and the 3rd respondent in spite of furnishing the security, as is required in law, offered the security through the writ petitioner, who is none other than the father of one of the partners of the 3rd respondent firm. This fact is not in dispute.

In the counter-affidavit, it is clearly stated, which remains
un-rebutted, that by virtue of the security/surety given by the writ petitioner, he is bound to discharge actual arrears of the tax of the 3rd respondent under the provisions of the CST Act. The liability of the petitioner is co-extensive to that of the 3rd respondent.

The impugned notice, dated 04-10-2004, issued under the provisions of the Andhra Pradesh Revenue Recovery Act as well as the notice, dated 04-11-2004, in our considered opinion, are not vitiated for any reason, whatsoever,

and more particularly, on the ground of there being any infringement of any principles of natural justice as alleged in the affidavit filed in support of the writ petition.

It is clearly explained in the affidavit filed by the respondent that before the notice in Form-5, dated 04-11-2004, was issued and published in the Guntur District Gazette on 06-01-2005, Form-4 notice, dated 04-10-2004, was issued as is required under law.

Learned counsel for the petitioner, however, made an attempt to contend, relying upon Rule 28(8) of the Andhra Pradesh General Sales Tax Rules 1957, that security/surety is required to be furnished for registration of an applicant as dealer only for an amount not exceeding an amount equal to the tax payable under the Andhra Pradesh General Sales Tax Act, 1957 (for short 'APGST Act') for a year as estimated by the authority, for proper realization of the tax and other dues payable under the APGST Act, and therefore, the proceedings initiated by the respondents for realization of the tax for a period of three years i.e., 1999-2000, 2000-01 and 2001-02 is unsustainable in law.

We are not impressed by the submission made by the learned counsel for the petitioner for the simple reason that this particular aspect has not been raised by the petitioner in the affidavit filed in support of the writ petition. It is nowhere pleaded that the writ petitioner furnished security/surety undertaking to pay the amounts not exceeding the amount equal to tax payable under the APGST Act for a year as estimated by the authority. On the other hand, sub-section (2-A) of Section 7 of the CST Act, enables the registering authority to whom an application is made by any person for registration as a dealer, impose a condition by an order in writing for issue of certificate of registration requiring the dealer to furnish in the prescribed manner, such security, as may be so specified, for proper realization of the tax payable under the provisions of the CST Act. As is evident from the averments made in the counter-affidavit, the petitioner herein furnished such security/surety in terms of sub-section (2A) of Section 7 of the CST Act, which enables the authority to proceed against the petitioner for realization of the tax payable under the provisions of the CST Act. Therefore, there cannot be any dispute that the total

amount of tax of Rs.15,09,246/- for the assessment years 1999-2000, 2000-01 and 2001-02 payable by the 3rd respondent is an amount of tax payable under the provisions of the CST Act. Respondents 1 and 2, therefore, are entitled to proceed against the petitioner for realization of the said amount from the petitioner in terms of the security/surety offered by him at the time of registration of the 3rd respondent as a dealer under the provisions of the CST Act. The petitioner having furnished such security/surety under the orders of the competent authority at the time of registration of the 3rd respondent as a dealer, he cannot be permitted to turn round, and contend, disputing the liability to pay the tax under the provisions of the CST Act.

We find no merit in any of the submissions made by the learned counsel for the petitioner.

The writ petition is accordingly dismissed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:07-06-2005

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RAMESH RANGANATHAN, J

SJ/PV

To

1. The Deputy Commercial Tax Officer, Arundalpet Unit,

Arundaipet Circle, Guntur.

2. The Commercial Tax Officer, Kothapet Circle, Guntur.

3. Two C.Cs. to Special Standing Counsel for Commercial Tax, High Court Building, Hyderabad (O.U.T.).

4. Two C.Cs. to G.P. for Commercial Tax , High Court Building, Hyderabad (O.U.T.).

5. Two C.D. copies.